

In re Patent Application of:
ROBERT M. HERRIN
Serial No. 10/721,962
Filing Date: 11/25/2003

Remarks

Claims 1-19 and 46-58 remain in the case. Applicant asks that the remarks herein presented be respected and reviewed by the Examiner in support of allowance of the claims remaining in the case. Alternatively, Applicant asks that the Examiner retract the finality of the office action based on an apparent misunderstanding by the Examiner of the claimed invention with respect to teachings of the cited prior art.

Claims 6-7 were rejected under 35 USC §112, second paragraph, as being indefinite and are herein amended as above presented to more clearly point out and distinctly claim the subject matter which Applicant regards as invention.

Claims 1-6, 8, 10-19, 48-52 and 55-56 were rejected under 35 USC §102(b) as being anticipated by US Patent No. 3,978,774 to Royal (Royal '774). Respectfully, Applicant traverses the rejection of these claims under 35 USC §102(b) as being improper. It is understood that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Independent Claims 1, 8, 46 and 48 include a "passage" not identified and not suggested in the cited reference. Respectfully, the rejection is unsupported by the art and should be withdrawn.

Applicant and undersigned are puzzled by the statement of the Examiner on Page 5, Lines 3-7 stating "In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. the specifics of the "passage") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)."

Independent Claim 1 calls for:

In re Patent Application of:
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a compression plate movably carried in spaced relation to the partially formed tray;
a fixed plate carried in spaced relation to the compression plate, the fixed plate having a surface thereof generally parallel to the path of the platen, the fixed plate and the compression plate forming a passage therebetween; and

a second folding arm movable through the passage and positioned for biasing against the extended portion of the partially formed tray and for folding the extended portion through the passage, wherein the fixed plate is positioned for guiding the extended portion along the surface of the fixed plate onto a tray wall for providing a fully formed tray.

Independent Claim 8 calls for:

a compression plate movably carried in spaced relation to the partially formed tray;
a fixed plate carried in spaced relation to the compression plate and forming a passage therebetween;

a second folding arm movably positioned for biasing against the extended portion of the partially formed tray and for folding the extended portion through the passage, wherein the fixed plate is positioned for guiding the extended portion onto a tray wall for providing a fully formed tray.

Independent Claim 46 calls for:

a compression plate;
a fixed plate carried in spaced relation to the compression plate, the fixed plate having a surface thereof generally parallel to the path of the platen, the fixed plate and the compression plate forming a passage therebetween, wherein the compression plate is moveable toward the fixed plate; and

a second folding arm rotatable about an axis thereof for movement through the passage and biasing against the extended portion of the partially formed tray, the extended portion being guided within the passage along a surface of the fixed plate, the axis of the second folding arm being generally perpendicular to the axis of the first folding arm.

Independent Claim 48 calls for:

a fixed plate carried proximate the first folding arm;
a compression plate carried in spaced relation to and movable toward the fixed plate, wherein a passage is formed therebetween; and
a second folding arm movable through the passage and positioned for biasing against the extended portion of the partially formed tray and for folding the extended portion through the

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Serial No. 10/721,962
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passage, wherein the fixed plate is positioned for guiding the extended portion onto a tray wall for providing a fully formed tray.

Independent Claim 51 calls for:

a compression plate movably carried in spaced relation to the partially formed tray;

a fixed plate carried in spaced relation to the compression plate, the fixed plate having a surface thereof generally parallel to the path of the platen, the fixed plate and the compression plate forming a passage therebetween; and

a second folding arm movable through the passage and positioned for biasing against the extended portion of the partially formed tray and for folding the extended portion through the passage, wherein the fixed plate is positioned for guiding the extended portion along the surface of the fixed plate onto a tray wall for providing a fully formed tray.

In addition, support for the passage may be found in Paragraph 29, by way of example, stating that a fixed plate 124 is carried in a spaced relation to the compression plate 122 to form a passage 126. The "passage" is addressed in paragraphs 5, 29, 38 and 39, as well as the independent claims as originally filed.

Further, review of *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), appears to address interferences and counts. While *In re Van Geuns* does state that "despite applicant's assertion that claim's uniform magnetic field limitation must be interpreted in light of specification and understanding of persons skilled in the art....," such does not appear to be appropriate since the claims in the present case clearly state and specifically describe the "passage" in the claims.

Clearly, every element called for in Claims 1-6, 8, 10-19, 48-52 and 55-56 is not found in the Royal '774 reference as stated by the Examiner. Contrary to the Examiner's statement. Again, Applicant asks that the Examiner evaluate the claimed invention based the claimed element combinations as logically connected to work toward a unitary result, and not on an aggregation of what has been interpreted as anticipated elements.

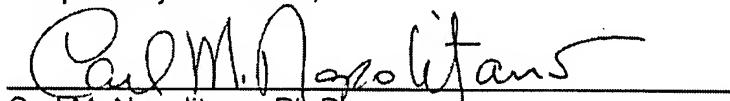
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Respectfully, the arguments presented by the Applicant in the Response to Office Action dated 06/26/2007 Paper No./Mail Date 20070615 are sound in light of what appears to be a clear misunderstanding of the claimed invention and known prior art. Applicant traverses the rejections under 35 USC §103 as earlier presented and as supported by the above arguments. This application is therefore felt to be in a condition for allowance.

Alternatively, Applicant asks that the finality of the Office Action be withdrawn and again asks that an interview be granted. Such an interview should allow the Applicant and the Examiner to at least have a "meeting of the minds" with regard to understanding each side's point of view, but more specifically will allow the application to come to a satisfactory conclusion without unnecessary further costs of time and dollars. Respectfully, the earlier interview request under the non-final period appears to have been ignored to the detriment of the Applicant. The Applicant earlier requested an interview based on the unusually long prosecution, including multiple office actions and multiple Examiners.

Applicant and undersigned look forward to a timely response.

Respectfully submitted,



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